

Notice of Allowability

Application No.

10/671,179

Applicant(s)

KIANI ET AL.

Examiner

Etsub D. Berhanu

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE and amendment filed 28 March 2007.
2. ☒ The allowed claim(s) is/are 2-20.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EDB

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jarom Kesler on 09 May 2007 wherein amendments to claim 2 were discussed in order to clarify that an initially measured blood constituent value is compensated with a second parameter input and wherein amendments were made to provide proper antecedent basis throughout the claims.

The application has been amended as follows:

Claim 2 has been amended to read:

2. A method of monitoring a blood constituent value comprising the steps of:

determining a relationship between a blood constituent value, a biological property and a compensated measurement of said blood constituent value;

reading a primary input in communication with a first device responsive to said blood constituent value;

reading a parameter input in communication with a second device responsive to said biological property;

wherein said first device comprises an optical device and said second device comprises a non-optical device;

processing said primary input and said parameter input according to said relationship to as to determine said compensated measurement of said blood constituent value; and

causing an output indicative of said compensated measurement of said blood constituent value to be displayed.

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Claim 3, line 11 has been amended to include the term - - values - - between the terms “constituent” and “from”.

The term “said” in Claim 4, line 7 has been amended to read - - a - -.

Claim 14 has been amended to read:

14. The monitoring method of Claim 2, wherein the step of determining a relationship further comprises determining a relationship between the blood constituent value, the biological property, the compensated measurement and a previously obtained compensated measurement and wherein processing said primary input and said parameter input according to said relationship so as to output said compensated measurement further comprises processing said previously obtained compensated measurement.

Claim 17, line 10 has been amended to include a semi-colon after the term “input”.

Claim 18 has been amended to read:

18. A monitor for compensating a first physiological property using a second physiological property, the monitor comprising:

 a primary input in communication with a first device and responsive to a first physiological property;

 a parameter input in communication with a second device and responsive to a second physiological property; and

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a processor configured to output [said] a compensated measurement of the first physiological property from said primary input and said parameter input utilizing a compensation relationship between said primary input and said parameter input;

wherein said second physiological property comprises Hct.

2. The following is an examiner's statement of reasons for allowance: None of the prior art teaches or suggests, either alone or in combination, compensating an initially measured blood constituent value or physiological property using a second physiological property using a compensation relationship between a primary input responsive to the blood constituent value or physiological property and a parameter input responsive to the second physiological property, in combination with the other claimed elements or steps.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etsub D. Berhanu whose telephone number is 571.272.6563. The examiner can normally be reached on Monday - Friday (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571)272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ERIC F. WINAKUR
PRIMARY EXAMINER

